Sovereign Equality

Koskenniemi, Martti

Cambridge University Press
2020-10-01

Koskenniemi , M & Kari , V 2020 , Sovereign Equality . in J Viñuales (ed.) , The UN Friendly Relations Declaration at 50 : An Assessment of the Fundamental Principles of International Law . Cambridge University Press , pp. 166-188 . https://doi.org/10.1017/9781108652889.009

http://hdl.handle.net/10138/328628
https://doi.org/10.1017/9781108652889.009

unspecified
acceptedVersion

v

CHAPTER 9

Sovereign equality

Martti Koskenniemi / Ville Kari

I. INTRODUCTION

Why did the legal principle of sovereign equality of states need a restatement in 1970? After all, it was not only expressly declared in the UN Charter ("The Organization is based on the sovereign equality of its members", Article 2(1)) but also deeply embedded in the conceptual structure of international law. One could say (and some have said) that the restatement was simply a redundancy.[1] To be a "State" was to possess sovereignty, and "sovereignty" meant that one was not subordinated to another entity. All sovereigns would thus be equal in their non-subordination to each other. But whatever purists might say, the Friendly Relations Declaration was intended by its initiators neither as an exercise around the meaning or logic of the key concepts of the Charter nor as a formal celebration of their 25-year old existence. It was instead part of the push by the decolonised world, the majority of the UN members that had not participated in the drafting of the Charter, to give its major provisions a meaning that would better include their objectives.[2]

The debate on the Friendly Relations Declaration in the various Special Committees during 1963–1970 provides a good example of how international legal concepts are used as "fighting words" in order to advance or oppose specific policies. Who could possibly have anything against "Friendly Relations and Co-operation"? Is it not obvious that this is what all members of the United Nations –

---

1 For Arangio Ruiz, sovereign equality is "too tautological for words". Gaetano Arangio-Ruiz, *The UN Declaration on Friendly Relations and the System of Sources of International Law* (Sijthoff & Noordhoff, 1979), 144.

2 There is a tendency in academic literature to diminish the programmatic aspect of the 1970 declaration and to take the principle of "sovereign equality", as Brad Roth puts it, "no[t] as a political slogan, but as a reference to a core set of legal entitlements that the legal order attributes equally to all states". *Sovereign Equality and Moral Disagreement* (Oxford University Press 2011), 53. As such, it appears as a merely analytical devise – which, while perhaps useful from a moral-jurisprudential perspective – fails to capture its role in the late-20th century debates over the character of the international order.

indeed all human beings – crave? And yet, some Western lawyers were dubious of the project from the start. In a long review of its preparatory work until 1966, George Haight from the US, for example, regarded the title as a "euphemism for 'peaceful coexistence' and an old stalking horse in the Cold War", created to "meet the propaganda challenge of the Soviet block". A "major objective", he wrote, was to "foment wars of liberation in order to assist allegedly 'enslaved peoples' in the struggles against allegedly 'imperialist oppressors'". [3] We may (indeed we should) disagree with the tone of Haight's point, but not really with his perspective.

The project for a declaration was not just to spell out truisms that would leave the UN and the world as it was. True, that is how many Western representatives saw it during the preparatory process, when they were keen to stress that the declaration would, above all, deal with the "juridical equality of States" and "respect" for their "personality".[4] But for the representatives of the formerly colonized countries – supported by the socialist block – it was instead part of the collective effort that had commenced by the passing of the Decolonization Declaration (UNGA Res 1514 (1960)) and would peak in the Charter of Economic Rights and Duties of States (UNGA Res 3281 (1974)). With all these instruments, the Third World countries, or the Group of 77, aimed at tweaking the Charter and the activities of the organization towards their political objectives, especially the push towards more than the merely *formal* equality that UN membership offered to them.[5] In the drafting process, this was most clearly visible in the failed effort by the representatives from developing States to include a reference to what was labelled "[t]he right of States to dispose freely of their national wealth and natural resources". For these representatives, a declaration of "sovereign equality" in 1970 would need to draw attention to the world's immense political, military and above all economic inequalities. Failing to go beyond "juridical equality" would

---

[3] George Haight, 'Principles of International law Concerning Friendly Relations and Cooperation among States', 1 *The International Lawyer* (1966), 96–7.

[4] See e.g. the proposal by the United Kingdom, UN Doc. A/AC.119/L.8, included in Report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States, UNGA Doc A/5746 (16 November 1964), 149 (para 296). The proposal listed four elements in the principles: (a) that States are juridically equal; (b) that each State enjoys the rights inherent in its sovereignty; (c) that the personality of the State is respected, as well as its territorial integrity and political independence; (d) that the State should, under international order, comply faithfully with its duties and obligations".

[5] This objective was well expressed in the emblematic work of a late phase in that era, Mohammed Bedjaoui's *Towards a New International Economic Order* (UNESCO 1979). "Sovereign equality", he wrote there , was to be "formulated afresh so as to restore to each State the basic elements of its national independence on the economic level", 87. In the "vast and prodigious battle against inequality", UN General Assembly resolutions would be the favoured instruments of the Third World, 13 and 138-143.

underline the hypocrisy of an institution that tolerated and, as history would show, helped to produce the massively unequal distribution of power and resources between what we have now learned to call the global south and the developed north. "Sovereign equality" was a fighting expression, not a logical redundancy. Everyone understood that it was to be read as a call for transformation.

We now know that nothing came of that effort. According to the most recent Oxfam report, "eighty two percent of the wealth generated [in 2018] went to the richest one percent of the global population, while the 3.7 billion people who make up the poorest half of the world saw no increase in their wealth".[6] Such data could, of course, be produced endlessly. It has become part of the background noise that merges with the flow of global information which, instead of inciting to action, contributes to the melancholic consciousness around the world that acquiesces to the inevitability of what exists. What a difference half a century makes! In 1970 the UN had begun a number of reform projects to attack the injustices of the old world – from control of multinational companies to the sharing of space technology, from the distribution of marine resources to supporting national liberation movements. It was the point of the Declaration to bring such and many other projects under a single restatement that would show the UN as not just a post-war institution set up to perpetuate the control of the victorious powers but as a mechanism for building a fairer world. Of course, the general and question-begging nature of many of its provisions shows the complexity of that task and how little agreement there was on where it should begin or what it might mean. "Sovereign equality" concentrates all the ambivalences of that very effort. Its pure formalism tells us not to discriminate between the "just" and the "unjust"; and for those impatient with such formalism it puts the impossible burden of having to convert everyone else (including the unjust) to a faith that is at its weakest precisely when it has to explain itself.

Sovereign equality is both necessary and impossible. In the absence of a universal moral truth – or at least access to anything of the kind – it invites us to live with the special truths of different nations, as if saying: there is no world empire, so let's accept the world we have and try to make the best of it. Sovereign equality invites pluralism, tolerance and an effort to work in good faith and on fair terms with those with whom we disagree. But behind its façade of common-sense and practical advice, it holds the wish for transformation in abeyance. The tension

---

[6] 'Richest 1 percent bagged 82 percent of wealth created last year – poorest half of humanity got nothing' Oxfam Press Release, 22 January 2018, https://www.oxfam.org

between merely "formal" and truly "substantive" equality keeps pressing legal actors to move from words to deeds, their hypocrisy reminding them over again of the virtue to which they pay endless compliment.

The inequality of sovereign nations is so ingrained in the fabric of the international system that a single chapter may hardly hope to properly unpack the reasons and stakes behind it. But one thing we can try is to stand back and behold the sheer immensity of the challenge that sovereign equality has always posed international lawyers. Accordingly, in the following we will walk alongside the discipline's long-term past and take stock of some of the attempts of our predecessors to deal (or avoid dealing) with this most controversial equation.

II. SOVEREIGN EQUALITY: AN IDEA OF THE ENLIGHTENMENT

The European world of sovereign states with a law of nations between them was born out of the demise of the pretence of the Holy Roman Emperor of being a *dominus mundi*, Lord of the world. The monarchs of France, England and Spain had been claiming independence from the emperor and used the expression of "sovereign" to distinguish their kingship from that of other feudal lords at least since the 13th century. Even as ruling families in Europe and elsewhere often asserted their special status by invoking divine institution or their role as protectors of the faith, by the 18th century it was largely accepted that one could think of Europe as a "system" composed of several nations or "States" that were in some respect equal to each other. This moved the focus away from the person of the ruler or the de facto power of the structure that was the object of rule – that is "statehood" – and onto the recognition that, as a "State", it was to be legally treated as equal to every other such (European) entity.

But qualitative distinctions between sovereigns had been already useful for the Roman empire and careful distinctions were made in medieval times between the empire and barbarians, or the Christendom and the infidels. Long after the reformation and the peace of Westphalia had introduced a new European family of sovereign states, the distinction between *those* sovereigns and all the rest remained central to the law of nations. Variations of this distinction would continue to be deployed to mark a rejection of non-European peoples as well as colonial insurgents, maroons and fugitive slaves beyond the pale of international law.

Whatever the treaty-makers in Münster and Osnabruck may have believed they were doing, mid-eighteenth century jurists came to agree that "Westphalia" marked the end of any legitimate pursuit of formal Europe-wide hegemony. The Peace of Utrecht (1713), which ended the War of Spanish succession and what contemporaries saw as the French pursuit of "universal monarchy", affirmed this

interpretation by consecrating the technique of a balance of power at the heart of European diplomacy. It also served as the paradigm and the principal reference for the most important 18th century work on European diplomacy and the law of nations, Emer de Vattel 's *Droit des gens* (1758). According to Vattel, "Europe forms a political system, an integral body, closely connected by the relations and different interests of the nations inhabiting this part of the world".[7] Two "general laws" formed the core of that "system". One was the duty of every nation, as Vattel put it, "to contribute everything in her power to the happiness and perfection of all the others", and the second was the perfect "liberty and independence" of each such nation, their ability to freely determine what they shall or shall not do in the pursuit of the "natural rights" that each enjoyed.[8] "Liberty and independence" meant that no other nation could compel another to act in particular ways; each was entitled to follow its own lights. Vattel strengthened that point by a domestic analogy: nations were "composed of men" and could therefore be "considered as so many free persons" who were "naturally equal, and inherit from nature the same obligations and rights".[9] True, diplomatic mores recognised all kinds of formal precedence and pre-eminence among the *representatives* of nations, but none of this deviated from the *legal* equality of their nations.[10] Vattel concluded with these famous lines: "A dwarf is as much a man as a giant; a small republic is no less a sovereign state than the most powerful kingdom".[11]

The idea of "sovereign equality" was the product of enlightenment rationalism: if an entity was internally free and externally independent, then it was logically equal to every other such entity. The account was also limited in the same ways as enlightenment rationalism was. In the first place, it remained confined to the European world. Few 18th century lawyers had much to say about the world outside. The commonplace lament about Spanish behaviour in the "Indies" did not translate into arguments about equality. Vattel, for instance, mentioned China, Japan, Ceylon and the Ottoman empire in several places, recognizing the binding nature of the legal arrangements made with them. But he also labelled the Ottomans as a "savage nation" that could be seen as an "enemy to the human race"

---

7 Emer de Vattel, *The Law of Nations* (ed. and intro. by B Kapossy & R Whatmore, Indianapolis 2008 [1758]), III. 3.47 (496).
8 Vattel, Preliminaries, 13-16 (73-74).
9 Vattel, Preliminaries, 18 (75).
10 Vattel, II 3.36-40 (281-4).
11 Vattel, Preliminaries, 18 (75).

that could be subjected to punishment or even "extermination".[12] Although he put forward no general distinction between "civilized" and "uncivilized" nations, he did use "civilization" itself as a criterion for discriminatory treatment (including *within* Europe).

The second limitation of rationalism was, well – that it was *rationalism*. Perhaps the most important effort in the 18th century to make diplomatic reality of sovereign equality was the proposal of 21 articles, made by one of the great survivors of the French revolutionary period, the abbé Henri Grégoire in the National Convention in the spring of 1793. According to the proposed *Déclaration de droits des gens* (Declaration on the Rights of Nations), all peoples (gens) were "independent and sovereign" and connected to each other by "universal morality". Each people was master of its territory while areas not subject to occupation (such as the seas) belonged to all. Foreigners were to abide by the laws of the country where they stayed, and a people had the right to refuse entry to foreigners it considered dangerous to their security. Any attack against the liberty of one people was an attack on all of them and offensive leagues were contrary to the "human family". There were to be no ranks among the representatives of peoples, and they enjoyed immunity from the laws of their receiving countries. Finally, even as Grégoire expressed the view that that "no other government [was] in conformity with the rights of peoples than ones that [were] based on equality and liberty", he also accepted that no people had the right to intervene in the government of another.[13]

The declaration was never adopted. In view of the tense international situation in June 1793, the deputies held it sufficient to state that France declare its friendship with all peoples; there was reason to be "political" and not to express futile philanthropic sentiments. The same fate befell Grégoire's second try two years later. Already at the time, German lawyers ridiculed Grégoire's idealism. Its submission gave reason for Georg-Friedrich von Martens at the University of Göt-

---

[12] Vattel, III 3.34 (487). For details, see Jennifer Pitts, 'Empire and Legal Universalisms in the Eighteenth Century, 117 *The American Historical Review* (2012), 92–121.

[13] For the articles, see Pierre Fauchon, *L'abbé Grégoire. Le prêtre-citoyen* (Paris, Nouvelle-République, 1989), 87-88. For a critical commentary highlighting the "chimerical" aspects of the articles, see Linda Frey & Marsha Frey, 'Grégoire and the Breath of Reason: The French Revolutionaries and the *Droit des gens'*. 38 *Journal for the Western Society of French History* (2010), 163-177. The best discussion of the context and a full list of the 21 articles can be found in Marc Bélissa, 'La déclaration du droit des gens de l'abbé Grégoire (june 1973, 4 floréal an III)', <https://revolution-francaise.net/2010/10/06/399-declaration-droit-des-gens-abbe-gregoire-juin-1793>The text has also been reprinted in Vladimir-Djuro Degan, 'L'affirmation des principes du Droit naturel par la Révolution française. Le projet de Déclaration du Droit des Gens de l'abbé Grégoire'. 35 Annuaire français de droit international (1989), 99-116.

tingen to write a new foreword to his widely read *Einleitung in das positive europäische Völkerrecht* (later repeated in the 1820 and 1864 French editions as a kind of methodological-political *credo* of its author). There was no lack of aspects of international law, Martens wrote, where agreement between European powers would not be desirable. But to believe that they would suddenly adopt a general code of this type was devoid of any realism. Moreover, to declare principles of morality was pointless: they can be realised only under conditions which, if they were present, would make their declaration unnecessary.[14] The declaration consisted of principles that were self-evident, but empty as practical directives. Some of them were undoubtedly part of "pure natural law" – such as the equality of State representatives – that, however, would never be actually adopted. The representative of San Marino would never be equal to the Ambassador of France.

Nineteenth-century diplomacy, the system of Concert of Europe, followed Martens rather than Grégoire. The great powers took upon themselves leadership of European affairs and would eventually carry out their colonial projects without the item of sovereign equality being seriously raised from any quarter. The Concert of Europe was thoroughly built upon an assumption that the old States were more legitimate than newcomers. Its hard core, Metternich's Holly Alliance, was to be remembered as a bastion of Christian monarchism against the rise of constitutionalism and all sorts of "real cosmopolitans, securing their personal advantage at the expense of any order of things whatever – paid State officials, men of letters, lawyers, and the individuals charged with the public education".[15] Later on in the century, it was the turn of the Germans to demand sovereign equality against France. In the same correspondence that motivated Johann Caspar Bluntschli and other European international jurists to establish the *Institut de droit international*, Francis Lieber defended German unification and Wilhelm's empire by insisting that France should "give up her absurd and pretended leadership of civilization" and stop interfering with the German constitution.[16] The matter would not be solved until after the Franco-Prussian war and the fall of the French Empire, when

---

[14] Georg-Friedrich Martens, *Einleitung in das positive europäische Völkerrecht* (1796), viii-ix.

[15] See Metternich's political confession of faith in *Memoirs of Prince Metternich 1815–1829, Volume III* (Mrs. Alexander Napier trans., London: Bentley & Son, 1881), No 488, at pp. 454–476.

[16] Thomas S. Perry ed., *Life and Letters of Francis Lieber* (Boston: James R. Osgood and Co, 1882), 365, 373.

also the *Institut* was founded to seek and to develop a more civilized and liberal law of nations.[17]

Beyond Europe, on the other hand, the nineteenth-century maritime powers operated through the pragmatic lens of colonialism and inter-imperial relations, with their reactions ranging from intervention in the Greek rebellion to a persistent non-recognition of Haiti and from an overall neutrality in Spanish American revolutions to their ruthless gunboat diplomacy in the Far East. The 1884-85 Berlin Africa Conference underlined the distinction, joining the great legal minds of Europe in a multilateral treaty-making enterprise nevertheless engaged directly in the partitioning and colonial exploitation of Africa.

III. SOVEREIGN EQUALITY AS A PROCESS 1869–1919

The *Institut de droit international* was established to act as 'the legal conscience of the civilized world'. In one of its very first studies, it asked whether the customary European law of nations could also apply to Oriental nations.[18] The issue had been in the air since 1856 when the Ottoman empire had been declared "welcome to participate in the advantages of the public law and the concert of Europe".[19] But the relationship between European powers and the Porte had hardly become one of sovereign equals; even the old Ottoman capitulations were not voided until the Treaty of Lausanne in 1923, and arguably the Turkish position remained peripheral for a long time afterwards, regardless of their vindication in the case of the *S.S. Lotus*.[20] The *Institut*'s study on the oriental question was framed in a keynote speech by Dudley Field, who thought that the separation between Christians and the Orientals was originally caused by the seclusive attitudes of the latter.[21] Field proposed that non-Christian nations should be admitted to all the rights and subjected to all the duties of the nations of the West under interna-

---

17 On this confrontation, see Ville Kari, 'A Less Elevated Cosmopolitanism: Victor Hugo, Francis Lieber, and the Franco-Prussian War of 1870' in Jan Klabbers, Maria Varaki and Guilherme Vasconcelos Vilaça eds., *Towards Responsible Global Governance* (University of Helsinki 2018), 31–52.

18 1 IDI *Annuaire* 7–10. The topic was thus on par with the treatment of private property in maritime wars, the establishment of an international prize court, the development of the laws and customs of war, and the conflict of laws.

19 General peace treaty of Paris (30 March 1856), 114 *CTS* 409, 46 *BFSP* 8, Art VII.

20 Treaty of Peace signed at Lausanne (24 July 1923) 28 *LNTS* (1924) No 701, Article 28; *S.S. Lotus* (7 September 1927) PCIJ Rep. Series A.–No.10, 4. On the capitulations, see Arnulf Becker Lorca, *Mestizo international law* (Cambridge University Press 2014) 79–85. See further Eliana Augusti, *Questioni D'Oriente. Europa e imperio Ottomano nel diritto internazionale dell'Ottocento* (Edizioni Scientifichi, 2013).

21 A.P. Sprague ed., *Speeches, Arguments and Miscellaneous Papers of David Dudley Field* (New York: D. Appleton and Company, 1884) 447–456, at 450–451.

tional law – with the single exception that "until there is a greater assimilation between the nations of the East and the West with respect to judicial institutions, mixed courts and a special procedure should be established for the decision of all cases, public or private, in which Americans and Europeans are parties".[22]

The commission produced its report in 1879.[23] The results were inconclusive. Although there did not seem to be fundamental obstacles to a gradual rapprochement of the European and Oriental civilizations – the latter for example also accepted that nations could only be bound by obligations to which they had consented – considerable difficulties lay in the practical implementation of any sovereign equality. In particular, "all the European experts" were of the opinion "that the moment had not yet arrived when the European nations could dispose of the protective guarantees on which the administration of justice are safeguarded by virtue of the capitulations".[24] In the end, the commission found the question was too general and recommended in to be studied one Oriental power at a time.

In one respect, however, the study group did point a way forward. It restated and retrenched Europe's ancient "civilizing mission". Citing notorious incidents such as the Opium War, professor Joseph Hornung scolded the Christian powers for treating the question of the Orient simply as a narrow matter of protecting their own interests. But instead of suggesting that the Orient be treated as equals, Hornung demanded that Europe step up its civilizing efforts in the "intelligent and disinterested tutelage of the feeble". Europe was to intervene in violations of "the laws of humanity" and to safeguard "the grand interests of humanity". The stakes were the highest possible: "The *Völkerstaat* dreamt by Kant cannot begin to materialize until the civilized humanity comprehends the grander morality of its mission and begins to see other things besides its own self-interest or that of its nationals or its co-believers."[25] The view that colonialism was not just a deeply entrenched economic and political reality, but that it was something which in fact the Orient *needed* and to which Europe was *obliged* under international law, helped the European jurists circumvent many uncomfortable questions about the ethics of their world order. But they made sure to back this view up with the increasing practice of written treaties between the colonizers and the natives, thus securing the (putative) consent of the indigenous populations to European domi-

---

22 Ibid, p. 456.
23 3–4 IDI *Annuaire* (1879–1880), pp. 301–305.
24 Ibid, p. 304.
25 Note de M. Hornung, 3–4 IDI *Annuaire* (1879–1880) pp. 305–307.

nation.[26] Such views were not eccentric but very much the norm in European international legal scholarship. The civilizing mission was then very much in vogue during the 1884–5 Berlin Conference.[27]

At the same time, plenty of inequality remained wrought within the internal fabric of the "civilized" world as well. As the intensifying transatlantic economy operated mainly between formally equal and fully recognized sovereigns, new international rules and principles emerged to govern then protection of foreign property and interests in sovereign states. State responsibility in particular became something of "a rite of passage for new States" regardless of the efforts of Latin American jurists such as Carlos Calvo to set its standards in terms favourable to their countries.[28] The League of Nations would become one of the arenas for Latin American resistance to this practice.[29] But retrospective critics such as Carl Schmitt saw in this nothing less than a transmutation of the civilized / non-civilized distinction into a new hierarchy between creditor and debtor States.[30]

IV. SOVEREIGN EQUALITY AND THE LEAGUE OF NATIONS

The Paris Conference of 1919 began a thorough renovation of international relations. From the ashes of war rose not only the League of Nations, but also a much revised and redrawn map of the empires, States and dependencies of the world. The mandates system sought to define the boundary between sovereign and non-sovereign peoples, and through it, the hierarchy was openly written down into an international constitution of the civilized world. The League exposed also other deep-rooted shortcomings in terms of sovereign equality. Membership itself was restricted, and some aspects of the organization – council membership, for in-

---

[26] Martti Koskenniemi, *The Gentle Civilizer of Nations. The Rise and Fall of International law 1870-1960* (CUP 2001), 136–143.

[27] For a notorious example see James Lorimer, *The Institutes of the Law of Nations: A Treatise of the Jural Relations of Separate Political Communities* (2 vols., William Blackwood and Sons 1883–4), Vol I p. 93, 101–102, 156–162. See further Martti Koskenniemi, 'Race, Hierarchy and International law: Lorimer's Legal Science'. 27 *EJIL* (2016), 415-429. Around the same time, Hornung had developed his initial thesis into a series of articles on the distinction of the civilized and barbarians, and his views were much in tune with Lorimer's. See Joseph Hornung, 'Civilisés et barbares' (Parts I–V), 17 *RDI* (1885) 1–18, 447–470, 539–560 ; 18 *RDI* (1886) 188–206, 281–298.

[28] The expression is from Tzvika Alan Nissel, *A History of State Responsibility: The Struggle for International Standards 1870–1960* (Doctoral thesis, Helsinki 2016), p. 192. See also 154–160 and 191–195.

[29] Kathryn Greenman, *The History and Legacy of State Responsibility for Rebels 1839–1930* (Doctoral thesis, Amsterdam 2019) pp. 189–206; Arnulf Becker Lorca, *Mestizo international law* (Cambridge University Press, 2014) p. 317–326.

[30] Carl Schmitt, 'Forms of modern imperialism in international law' (Matthew Hannah trans.) in Stephen Legg ed., *Spatiality, Sovereignty and Carl Schmitt: Geographies of the Nomos* (Routledge 2011) 29–45, esp. 30–31.

stance – placed nations within the organization in variable positions of power. Most famously, the drafting of the Covenant saw an express legal debate about – and a rejection of – the principle of racial equality among nations. As a consequence, it can hardly be said that sovereign equality was ever at the core of the League of Nations project. Rather, the League project included a restatement of the prevailing sovereign inequalities under its formal international framework.[31]

1. Members and Mandates

The League of Nations was not open to all. There would always be sovereign States in the world that were either not interested in, or not admitted to, the League. Delegates were sent to Paris by many hopeful nations and peoples inspired by Wilson's call for the self-determination of peoples, seeking to secure support or even recognition and statehood. These were not fringe groups but among them were ancient and often populous peoples such as Egyptians, Indians, Koreans, and different African peoples supported by pan-Africanists. Some new nations managed to get themselves recognized and elevated among the civilized peoples, while others would be disappointed.[32] Many peoples had to simply acquiesce to the continuation of colonialism.

The mandates system emerged as a sort of compromise between British and French plans to simply keep the Ottoman territories and German colonies as old-fashioned conquests, and Woodrow Wilson's ideal of national self-determination which desired to open these areas for the open intercourse of all free nations.[33] Because the colonial peoples were "not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle

---

[31] Rose Parfitt, '*Empire des Nègres Blancs*: The Hybridity of International Personality and the Abyssinia Crisis of 1935–36' 24 *Leiden Journal of International Law* (2011) 849, 850–851.

[32] Arnulf Becker Lorca, *Mestizo International Law* (Cambridge University Press, 2014) p. 227–230, 237–239, 247, 270–274; Margaret MacMillan, *Paris 1919: Six Months that Changed the World* (New York: Random House 2001), p 225–242. On the significance of the 'Wilsonian moment' in the colonized world, see Erez Manela, *The Wilsonian Moment: Self-Determination and the International Origins of Anticolonial Nationalism* (Oxford University Press 2007).

[33] Susan Pedersen, *The Guardians: The League of Nations and the Crisis of Empire* (Oxford University Press 2015), 17–35; Taina Tuori, *From League of Nations Mandates to Decolonization: A History of the Language of Rights in International Law* (Doctoral thesis, Helsinki 2016), 31–36. See also the Sykes-Picot Agreement of 1916, 221 *CTS* 323. Even the American negotiators were not confident about the appropriateness of granting full independence to nations that were in their eyes likewise only partially civilized or even uncivilized. Their own experts in colonial affairs felt that the British model of colonial administration was nevertheless the best model to manage and develop the underprivileged populations. The mandates compromise was finally proposed South African general Jan Smuts, an ardent pioneer of apartheidism. On the role of Smuts, see Burkman, *Japan and the League of Nations* p. 69; MacMillan *Paris 1919*, 88–90, 98–100. The Smuts plan is also discussed in David Hunter Miller, *Drafting of the Covenant, Volume I* (G.P. Putnam's Sons, 1928), p. 34–39.

that the well-being and development of such peoples form a sacred trust of civilisation", stated the League Covenant. Accordingly, the best method of giving practical effect to this principle was entrusting the "tutelage" of such peoples to "advanced nations" on behalf of the League".[34] In other words, the white man's burden was translated to the language of universal civilization. However, by the time the actual mandates system kicked off, the U.S. had had a change of heart and rejected its membership in the League. The key non-European component of the equation thus removed, the reality of the colonial administration in many of the mandated territories differed little from that of the remaining "proper" colonies. As Susan Pedersen observes, "[n]ot administration but rather the work of legitimation moved to Geneva."[35] This is not to say that the mandates system was entirely irrelevant; it forced the colonizers to constantly explain themselves and created the prototypal body of international civil servants tasked with such oversight as it was able to exercise, but it certainly failed to satisfy the colonized peoples who were supposed to most benefit from the arrangement.

2. Racial equality between nations

Among the victorious powers, sovereign equality was not a fait accompli either. The most famous encounter in this respect involved the demand of Japan – now a major power – to include in the Covenant an express provision rejecting racial discrimination. Japan had come to Paris in part to rid itself of the residues of its second-class citizenship in the family of nations, and it intended to place this as a condition for its membership in the League.[36] Its delegate Makino Nobuaki therefore presented an amendment that sought to expand the Covenant's draft clause on 'religious liberty' to encompass also racial equality:

> The equality of nations being a basic principle of the League of Nations, the High Contracting Parties agree to accord, as soon as possible, to all alien nationals of States members of the League equal and just treatment in every respect, making no distinction, either in law or in fact, on account of their race or nationality.[37]

Although the Japanese themselves had intended the proposal to be understood as juridical equality between the signatory States and the rights of their nationals,

---

[34] League of Nations Covenant, Article 22.

[35] Pedersen, *The Guardians*, p. 5.

[36] Japan's three objectives were the Pacific islands, Shandong, and the racial equality clause. Thomas W. Burkman, *Japan and the League of Nations: Empire and World Order, 1914-1938* (Honolulu: University of Hawai'i press 2008), 60.

[37] David Hunter Miller, *The Drafting of the Covenant*, Vol I, p. 183; Margaret MacMillan, *Paris 1919* pp. 317–318.

their audience saw in it a proposal for a broader racial equality in the world. It was received with both interest and scepticism by the Western powers, but above all it was seen as problematic. In back room negotiations, the Americans sought to ameliorate the proposal by rephrasing it to reflect their own constitutional maxim that "all men are created equal", to which the British foreign secretary Lord Balfour allegedly responded that "that was an eighteenth century proposition which he did not believe was true".[38] On a more practical level, the proposal could not be accepted by countries such as Australia and the United States that were very concretely restricting the movement and property rights of Japanese immigrants.[39] In a telling note, the American drafter David Hunter Miller advised Wilson's advisor:

> The trouble with the Japanese proposition is this: … This draft was not acceptable because it had, as you appreciated, no particular legal effect, because it was not intended to have any. Any draft which had a real effect would, of course, be impossible.[40]

In the final meeting on the Covenant, the Japanese delegates proposed a watered-down compromise of the equality clause, one demoted to the Preamble and merely calling for "the endorsement of the principle of equality of nations and just treatment of their nationals".[41] They spoke eloquently and gradually gained support from all quarters, but got in the absence of unanimity ultimately rejected. [42]

The League of Nations was never established on the basis of sovereign equality. Although the Paris Peace Conference and Wilson's project for the Covenant were envisioned as a new beginning for an ever more peaceful and civilized world, that world was still one where colonialism and discrimination were understood as established aspects of modern life. The debates and decisions taken then brightly reflect that reality. It is therefore remarkable to see how fundamentally unequal States and peoples were only fifty years before the Friendly Relations Declaration, not only in practice but in the letter of law as well.

---

38 Hunter Miller, *Drafting the Covenant*, Vol 1 p. 183–184.

39 Burkman, *Japan and the League of Nations*, 81–86; MacMillan; *Paris 1919*, p. 316, 318–319.

40 Hunter Miller Vol I p. 184.

41 Burkman, *Japan and the League of Nations*, 81–82.

42 Burkman, *Japan and the League of Nations*, 85; MacMillan, *Paris 1919* p. 320; Hunter Miller, *The Drafting of the Covenant* vol I p. 461–464. Japan was later propitiated with the disputed Chinese province of Shandong, which in turn marked a travesty and public scandal for the Chinese. See Treaty of Versailles (1919) arts 156–158. On Wellington Koo's concerns on the 'Asiatic Monroe Doctrine' see Hunter Miller *Drafting of the Covenant* vol I p. 453–454, 457–461; MacMillan, *Paris 1919*, p. 322–344.

V. SOVEREIGN EQUALITY AND THE UNITED NATIONS

Unlike the League of Nations, the United Nations Organization was established on the principle of sovereign equality. The principle emerged already in Allied wartime declarations which "recognize(d) the necessity of establishing, at the earliest practicable date, a general international organization, based on the principle of the sovereign equality of all peace-loving States".[43] This principle was subsequently enshrined in Article 2(1). But just as well, the UN has also been characterized as representing "a deliberate retreat from the League's comparative egalitarianism back to the great power conclaves of the past".[44] In the United Nations there are sovereigns and then there are Sovereigns. Insofar as sovereign equality of States was inserted into the Charter as the general and principal rule, then it meant that the exceptions and conditions to that main rule became increasingly visible and formal. From its very beginning, the UN was built on a division between the exclusive club of the Security Council with its veto-wielding permanent five, the General Assembly of all nations, the (now redundant) "enemy states", and beyond them all still, the Non-Self-Governing Territories (i.e. colonies) and trusteeships. What, if anything, did sovereign equality in such a reality really come to mean? The battle for sovereign equality would very much preoccupy the organization for its first three decades.

1. Charter drafting and Security Council

During the preparations of the San Francisco conference, intense debates took place about the relations between the members of the future organization. In many ways the Dumbarton Oaks draft plan looked like a continuation of the League, with a strengthened position for the great powers over others. International experts decried particular rules and omissions, such as the optionality of peaceful settlement of disputes or the lack of appeal from the Security Council to the General Assembly.[45] Haiti proposed an amendment that echoed the old Japanese initiative

---

[43] Declaration of Four Nations on General Security, paragraph 4, in *United Nations Documents 1941–1945* (London: Royal Institute of International Affairs 1947) p. 13. There were similar brief references to the need of a security organization in the Atlantic Charter, the Declaration of the United Nations and other similar proclarations. The term 'peace-loving' was inserted at the initiative of the Soviet Union.

[44] Mark Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* (Princeton University Press, 2009), p 149.

[45] Hans Kelsen argued that "The only way to establish on the principle of 'sovereign equality' an international organization able to 'maintain international peace and security' more efficiently than the League of Nations did, is the establishment of an international community whose main organ is an international court endowed with compulsory jurisdiction." Only an impartial and compulsory court could furnish the international community with authoritative interpretations of legal facts that would determine the applica-

in 1919: "The Organization is based on the principle of the sovereign equality of all States that love peace and exclude from their relations any racial or religious discrimination."[46] The most contentious issue was the privileged position of the permanent members of the Security Council. Smaller States raised concern over the compatibility of those privileges with the ideal of sovereign equality. Moreover, if they now signed the Charter these distinctions would be made permanent.[47] Some therefore proposed alterations to its role. Turkey, for one, submitted that the principle of sovereign equality should lead to the concentration of all matters of peace and security in the hands of the General Assembly, at least in the last instance.[48] But there was no way to secure the accession of the leading powers without granting them their special status.[49] Ultimately, the resultant hierarchy was the price the signatories were willing to pay (albeit reluctantly) for a new security mechanism with a broad membership. But a hierarchy it was. In 1946, the Soviet jurist Eugene Korovin stated the situation candidly:

> It is nothing new in history for Great Powers to occupy a privileged position. What is new is that definite privileges are accorded the great democratic states not in their own interests but in the interests of all the states, of the whole international collectivity, by making their international rights correspond to their international obligations.[50]

2. Trusteeships and Bretton Woods

In the UN, the old mandates system was replaced by a new mechanism of trusteeships. The trusteeship system was quite consciously drafted to require little immediate change from the colonial powers, and came as an acquiescence by the United States and other non-European powers to the continuance of European colonial

---

ble rules. "If, however, this hope is, indeed, too optimistic," he warned, "if it shall be impossible to realize this minimum of centralization because it will be considered as incompatible with the 'sovereign equality of all peace loving States,' there will, then, be no hope at all for a real improvement of international relations, and the peace organized by those States will prove to be nothing more than a short armistice between this and another world war." Hans Kelsen, 'The Principle of Sovereign Equality of States as a Basis for International Organization' 53 *Yale Law Journal* (1944) pp. 207–220, at 214, 218, 220.

46 Proposed Amendments to the Dumbarton Oaks Proposals Submitted by the Haitian Delegation: Amendment to Chapter II. *Documents of the UN Conference in San Francisco, 1945*, Vol III p. 52.

47 The government of the Netherlands voiced this quite openly: "The smaller powers, who are invited in the Dumbarton Oaks Plan to perpetuate and legalise an existing de-facto position of inferiority, may be permitted to point out that, if exorbitant special rights were granted virtually placing the great powers above the law, this Plan would be of little avail for the rest of the world, inasmuch as a return of the world to anarchy would not be excluded." Suggestions presented by the Netherlands on the Dumbarton Oaks proposals, January 1945 Documents of the UN Conference in San Francisco, 1945, Vol III, p. 306 at 315.

48 Turkish opinion, *Documents of the UN Conference in San Francisco*, 1945, Vol III p. 481.

49 Daniel-Erasmus Khan, 'Drafting History' in Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, Andreas Paulus and Nikolai Wessendorf eds, *The Charter of the United Nations: A Commentary, Volume I* (3rd edn., Oxford University Press 2012), paras 41–51 at pp. 15–18.

50 Eugene Korovin, 'The Second World War and International Law', 40 *AJIL* (1946) 742, 746. Also cited in Mazower, *No Enchanted Palace*, p. 150.

possessions (with a trade-off at Bretton Woods).[51] Many of the attending States were content with the insertion of a grandiose and visionary preamble in the Charter, and on the new principles of human rights, such as the goal of promoting and encouraging respect for human rights "for all without distinction as to race, sex, language, or religion" in Article 1(3). Arguably, this new human equality was emphasized instead of old sovereign equality.

As formal colonialism itself proved unsustainable soon after the signing of the Charter, the trusteeship system gradually succeeded in making itself obsolete. But in 1945, this was not yet to be seen, and some trusteeships lingered on until the 1990s as the concerned nations gradually either gained independence or voluntarily joined existing States.[52] By that time, however, independence did not necessarily mean the attainment of full sovereign equality in the decolonizing world. Already a year before the Charter of the United Nations was brought to San Francisco, the other half of the bargain between the old colonial Europe and the new ascendant United States had played out at Bretton Woods – and in those discussions, the word "equals" was scarcely mentioned except in the domain of mathematical calculus. That conference was one of the starting-points for a new restructuring of the international community, where sovereign equality was substituted for old colonial subordinations, but at the same time new legal foundations were laid for safeguarding the continuing economic interests and privileges between developed and developing countries.

During the world war, the major Allied powers had become acutely aware of their dependence on the natural resources and raw materials from across the seas. Moreover, among them the exigencies of war meant that the balance of power was shifting to the Western side of the Atlantic. When designing the economic future for the post-war period, it was increasingly obvious that as a price for their involvement in the war, the Americans expected that the centuries of colonial monopolies would now come to an end.[53] In the 1941 Atlantic Charter the U.S. and the U.K. agreed, as part of their common policies "for a better future for the world … to further the enjoyment by all States, great or small, victor or vanquished, of access, on equal terms, to the trade and to the raw materials of the world which

---

[51] Mark Mazower, *No Enchanted Palace*, 60–65. On the Bretton Woods Conference and the emerging principles for the organisation of the world economy see the contribution by Kurtz, Viñuales and Waibel in this volume.

[52] For an overview of the termination of the trusteeships, see Andriy Y Melnyk, 'United Nations Trusteeship System' in *Max Planck Encyclopedia of Public International Law* (Oxford Public International Law Online 2013), paragraphs 23–27.

[53] Benn Steil, *The Battle of Bretton Woods* (Princeton University Press 2013), 4, 13–15.

are needed for their economic prosperity".[54] In Article VII of the 1942 lend-lease agreement, Britain agreed to join the U.S. in like-minded action for the development of world trade, including "the elimination of all forms of discriminatory treatment in international commerce, and to the reduction of tariffs and other trade barriers".[55] This was the project of the Bretton Woods conference in July 1944, and the convenors of the event made no mistake about it.[56]

When the new post-war economic institutions were set up, the goal of the full use of the resources of the world was also included in the first articles of the foundational documents of the World Bank and the IMF.[57] Unlike the UN Charter, the Articles of Agreement of the World Bank and the IMF did not mention sovereign equality. Instead, the voting power of each member State was dependent on its contributions and shares.[58] The goal of "developing the full use of the resources of the world and expanding the production and exchange of goods" was included then in the 1947 GATT.[59] The early activities of bodies such as ECOSOC and FAO also included the surveying of natural resources and charting their distribution.[60] In the post-war years the sentiment among the leading powers was that there was a scarcity of resources and that the economic reconstruction of the world (and the disaggregation of their wartime economies back to private entrepreneurship) required unimpeded access to the raw materials wherever they were

---

54 Atlantic Charter (1 January 1942) 204 *LNTS* 381, preamble and fourth principle. On the hemispheric and transatlantic background of the Atlantic Charter, see Mark Seddon, 'The Origins and limitations of the Atlantic Charter: Britain, the USA, Venezuela, and the development of free trade, 1933–1944' 14 *Journal of Transatlantic Studies* 2016, 65–82.

55 US-Britain Lend-Lease agreement (23 February 1942), Article VII, in Charles I Bevans, *Treaties and Other International Agreements of the United States of America 1776–1949* (Department of State publication 8761) Vol 12 p. 603, 605.

56 In his welcoming statement, Franklin Roosevelt went straight to the point: "Commerce is the life blood of a free society. We must see to it that the arteries which carry that blood stream are not clogged again, as they have been in the past, by artificial barriers created through senseless economic rivalries. Economic diseases are highly communicable. It follows, therefore, that the economic health of every country is a proper matter of concern to all its neighbors, near and distant. Only through a dynamic and a soundly expanding world economy can the living standards of individual nations be advanced to levels which will permit a full realization of our hopes for the future." Secretary of the Treasury Henry Morgenthau was equally eloquent: "We are to concern ourselves here with essential steps in the creation of a dynamic world economy in which the people of every nation will be able to realize their potentialities in peace; will be able, through their industry, their inventiveness, their thrift, to raise their own standards of living and enjoy, increasingly, the fruits of material progress on an earth infinitely blessed with natural resources. This is the indispensable cornerstone of freedom and security. All else must be built upon this." See *United Nations Monetary and Financial Conference Final Act and Related Documents* (Washington: U.S. Government Printing Office 1944), 1–4.

57 IMF Articles of Agreement (1944) 2 *UNTS* 39, Article I Section ii; IBRD Articles of Agreement (1944), 2 *UNTS* 134, Article I sections i-iii.

58 IBRD Articles of Agreement, Article II and Article V section 5; IMF Articles of Agreement Article III, Article XII section 5.

59 General Agreement on Tariffs and Trade (1947), 55 *UNTS* 187, Preamble.

60 Nico Schrijver, *Sovereignty over Natural Resources*, pp. 38–39.

found. In practice, this meant often operating abroad in the less developed countries of the world.

3. The 'Developing World'

The United Nations was no longer predominated by European empires. Europe was becoming increasingly provincialized, and its foremost global powers – the British and French empires – were breaking up internally.[61] The colonies had helped save their war-torn metropolitan centres, and now saw independence as their due. Ethnic and colonial disputes flared up throughout the colonial world, from South Africa to India to the Far East, and by the time India and Pakistan gained their independence, the members of the United Nations were well aware of the tide of history. In 1960, the General Assembly famously declared that "the subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation", and that "immediate steps shall be taken" in colonized areas "to transfer all powers to the peoples of those territories".[62] To put an end to talks about a lack of civilization or the ability of nations to stand on their own feet, as had been the idioms in 1919, the Assembly underlined that "Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence".[63] The conditional form 'should' and the initial reluctance of Europeans notwithstanding, the declaration did mark the way towards the transformation of colonies and trusteeships into independent States or voluntary overseas territories.

The Decolonization Declaration heralded a transition from a distinction between empires and colonies into one of the developed and developing countries. The post-war vision of international free trade and circulation of raw materials did not seem perfectly acceptable to many of the newly independent States, many of which had had no say in their drafting. Accordingly, their representatives increas-

---

[61] Great Britain let go of India and Pakistan (1947), Burma (1948), Palestine (1948), Ceylon (1948), followed by Sudan, Ghana and Malaysia in the 1950s, and the major wave of decolonization beginning in 1960. France abandoned its colonial empire officially in its constitution of 1946, but lingered in control over several overseas territories. These territories experienced several uprisings and insurrections from the 1950s onwards, and the Algerian war of liberation (1954–1962) was one of the major starting-points of the decolonization movement. On the legacy of that war, see generally Todd Shepard, *The Invention of Decolonization: The Algerian War and the Remaking of France* (Cornell University Press 2006).

[62] UNGA Declaration on the granting of independence to colonial countries and peoples 1514(XV)/1960, paras 1 and 5. See also UNGA Resolution on Principles 1514(XV)/1960; UNGA Res 1654(XVI)/1961.

[63] UNGA declaration 1514(XV)/1960 para 3.

ingly began to express a concern that these states were allocated a passive role in the extraction of their natural resources for the benefit of the "first world". Questions arose about the extent of their self-determination and especially their rights to introduce their own autonomous economic policies that might differ from what the leading powers and the international economic institutions recommended. As the newly independent "third world" countries reached superior numbers, they joined together in the non-aligned movement and the Group of 77, hoping to leverage the authority of the General Assembly, UNCTAD and other international fora to redesign the economic structures of the international system.[64]

The primary impact of the movement was felt in the context of the exploitation of raw materials enshrined in the Atlantic Charter and the GATT. Increasing need was felt for global access to natural resources in the developing world. As pointed out by Kurz, Viñuales and Waibel (Chapter 19), in the debates between 1949 and 1951 it was anything but clear how to set the balance between the local and global interests. In the wake of the debacle that followed the nationalisation of the Anglo-Iranian Oil Company, the argument over natural resources was reignited by a draft resolution by Uruguay, which recommended that member States recognise "the right of each country to nationalize and freely exploit its natural wealth, as an essential factor of economic independence".[65] The outcome was a compromise which omitted any direct reference to nationalization but recognized that "the right of peoples freely to use and exploit their natural wealth and resources is inherent in their sovereignty" and which "recommended" the use of this right consistently with international economic co-operation among nations.[66] Accordingly, Resolution 626 (VII) would be remembered in history as the "nationalization resolution".[67] Similar aspirations also blended with the ongoing drafting work of the international covenants of human rights. In 1958 the then-current draft of the Covenants included in the right of self-determination a "permanent sovereignty over ... natural wealth and resources".[68] The General Assembly con-

---

[64] e.g. Final Communiqué of The Asian-African Conference, Bandung, 24 April 1955, in Kweku Ampiah, *The Political and Moral Imperatives of the Bandung Conference of 1955* (Kent: Global Oriental 2007) Annex I, p. 228; Joint Declaration of the 77 Developing Countries made at the conclusion of the UNCTAD, in *Proceedings of the UNCTAD Geneva, 23 March* –16 June 1964 (New York: United Nations 1964) Vol I p. 66.

[65] UN Doc. A/C.2/L.165, 5 November 1962 and Corr. 1–3, as cited in Nico Schrijver, *Sovereignty over natural resources*, p. 42–43.

[66] UNGA Res. 626 (VII).

[67] Schrijver, *Sovereignty over Natural Resources*, p. 36, 41–49.

[68] Commission on Human Rights to ECOSOC 18th sessn., Supplement No 7, Doc. E/2573(SUPP), pp. 7–8, 62. On the other hand, there had been proposed an article on the right of property as a human right, as well as an expropriation clause, but these had not been adopted Neither the reference to permanent sov-

stituted a specific commission to explore the permanent sovereignty over natural resources,[69] which produced its report in 1961,[70] and the following year the Declaration on the permanent sovereignty over natural resources was adopted,[71] in the spirit of the "mutual respect of States based on their sovereign equality".[72]

And that is just about how far it went. In the final plenary debate before the vote, the Assembly had on the insistence of in particular the U.K. and the U.S. rejected a specific amendment proposed by the Soviet Union, which would have provided that the Assembly "unreservedly supports measures taken by peoples and States to re-establish or strengthen their sovereignty over natural wealth and resources, and considers inadmissible acts aimed at obstructing the creation, defence and strengthening of that sovereignty".[73] That wording was seen as leading into disequilibrium between property rights and sovereign authority. In the end, while the declaration affirmed the sovereignty of states over their natural wealth, it also maintained that in cases of "nationalization, expropriation or requisitioning … the owner shall be paid appropriate compensation, in accordance with the rules in force in the State … and in accordance with international law".[74] It also included a general reference to the possibility of freely agreed arbitration as well as the specific notion that "foreign investment agreements … shall be observed in good faith".[75] As a result, the Declaration did not substantially venture into the terrain of the international law of State responsibility, which would still apply in situations of investment disputes.

As pointed out by Kurz, Viñuales and Waibel (Chapter 16), this is not to say that the third world push in the Friendly Relations Declaration would have been utterly without effect. The oil exporting developing countries that joined in the OPEC cartel had by 1973 largely succeeded in gaining control of the vast majority of their fossil fuel reserves, had become important actors in the economic policy scene and, among other things, were able to establish an embargo against Western

---

ereignty over natural resources nor the property right and expropriation clause made it the final wording of the CCPR.

69 UNGA Res. 1314(XIII)/1958.

70 Report of the Commission on Permanent Sovereignty over Natural Resources (26 May 1961) UN ESCOSOC 32 Sessn., Agenda item 9 , A/AC.97/13.

71 UNGA Res. 1720(XVI)/1961; UNGA Res. 1803(XVII)/1962.

72 UNGA Res. 1803(XVII)/1962, para 5.

73 Report of the Second Committee (12 December 1962) Doc A/5344/Add.1, UNGA plenary meeting Agenda ítem 39 p. 22; GAOR Verbatim Records of the 1193rd and 1194th Plenary Meetings, XVII Sessn. (14 December 1962).

74 UNGA Res. 1803(XVII)/1962 para 4.

75 UNGA Res. 1803(XVII)/1962, paras 4 and 8.

countries collaborating with Israel at the time of the Yom Kippur war. Western petroleum conglomerates had been transformed from imperial actors into something like service providers. Significant gains were also attained in the law of the sea front. The establishment of the Exclusive Economic Zone (EEZ) in the 1982 UN Convention on the Law of the Sea and the employment of the straight baselines method for the delimitation of the territorial waters of archipelagic states such as Philippines and Indonesia helped enclosing the resources in large maritime areas under the jurisdiction of developing coastal states. [76] The development of deep seabed resources in the interests of the developing states did not commence as it was expected and the partial dilution of the provisions concerning the operation of the International Seabed Authority (ISA) after the entry into force of the Convention may have been disappointing to the developing states.[77] But the operations of the ISA, limited as they are, are among the few remaining institutional results of the call for a New International Economic Order, launched formally by the General Assembly in 1974.[78] At the heart of that call was the continuing insistence of a permanent right of states over their natural resources.

While states continued to disagree on whether the permanent right of states over their natural resources entailed the duty to pay "full" or "appropriate" compensation for expropriations (the many arbitral awards remained indeterminate in that regard), the developed states began their counter-offensive by endorsing, in 1958, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, in which they gave their blanket consent to the direct enforceability of awards of not only arbitrations appointed for each case but also those made by permanent arbitral bodies to which the parties had submitted.[79] In 1966 the ICSID convention brought to existence a dedicated investment arbitration framework under the auspices of the World Bank,[80] and after blanket consent to investor-state arbitration was introduced in bilateral investment treaties (BITs) since 1969, the

---

[76] See Articles 47 and 57 of the UN Law of the Sea Convention and comments e.g. in F. Orrego-Vicuña, *The Exclusive Economic Zone* (Cambridge University Press 1999) and Tara Davenport, 'The Archipelagic Regime' in Donald Rothwell et al, *The Oxford Handbook of the Law of the Sea* (Oxford University Press 2015), at 138–142.

[77] See e.g. Martti Koskenniemi & Marja Lehto, 'The Privilege of Universality. International Law, Economic Ideology and Seabed Resources' 65 *Nordic Journal of International Law* (1996) 533–555.

[78] Declaration on the New International Economic Order, UNGA Res 3201 & 3202 (S-VI) 1972.

[79] Convention on the recognition and enforcement of foreign arbitral awards, New York, 10 June 1958, 330 UNTS 38.

[80] Convention on the settlement of investment disputes between States and nationals of other States, Washington, 18 March 1965, 575 UNTS 159.

structures undergirding the present-day practices of investor-state arbitration were in place and ready to be discovered by the claims industry in the 1990s.[81] Since then, as Chapter 16 discusses at length, national sovereignty has often come under pressure owing to an arbitral practice that pays scarce regard to the principles underlying the 1962 UN resolution on the Permanent Sovereignty over Natural Resources.[82]

VI. SOVEREIGN EQUALITY IN THE DRAFTING OF RESOLUTION 2625

The Friendly Relations Declaration was officially intended to mark the 25th anniversary of the United Nations and to remind member States of the aspirations on which the organization was supposed to have been based. But in fact, it was understood by the majority of the members as an occasion to remind everyone of the distance between those aspirations and the reality of the international world. It became part of the push from the decolonized world to address the role of the organization in seeking a less unequal world. The attainment of formal independence and membership in the UN had not erased poverty and deprivation and the greatest part of member States remained still massively dependent on the former colonial powers. The alliance between the G77 and the socialist block remained firm and the shared intention was not only to restate the principles of the Charter but to give them an interpretation that would, as far as possible, highlight the objective of eradicating the colonial heritage and the global economic inequality that was part of it. The use of a Special Committee instead of the International Law Commission "gave weight", according to Bedjaoui, "to the modern process for the elaboration of law by means of the resolution".[83]

"The principle of sovereign equality of States" was one of the seven principles that the UN General Assembly had requested the Special Committee set up in 1964 to "study…so as to secure [its] more effective application".[84] Although the debate on this principle turned out, perhaps surprisingly, to be the least problemat-

---

[81] Rudolf Dolzer and Christoph Schreuer, *Principles of International Investment Law* (2nd Edition, Oxford University Press 2012), 6–11. According to Dolzer and Schreuer, the first BIT to offer investor-state arbitration was the Italy-Chad BIT of 1969.

[82] UNGA Res. 1803 (XVII). Arguably, as the regulatory freeze caused by investment arbitrations increasingly concerns the 'developed' states as well as the 'developing' ones, the outcome may be an increase in sovereign equality as the planetary privatization processes leave public institutions equally powerless at all quarters of the globe.

[83] Bedjaoui, Towards a New International Economic Order, 181.

[84] UNGA Res 1815 (XVII) 18 December 1962.

ic of the seven principles, the basic differences of approach were apparent from the outset. Three proposals lay on the table in 1964 – one from the socialist block (formally presented by Czechoslovakia), one from the developing countries (formally by Ghana, India, Mexico and Yugoslavia) and Western proposal presented by the UK. Although the Special Committee was able to produce a consensus definition on "sovereign equality" already at that first meeting, its report nevertheless was supplemented by a number of proposals that had fallen outside the consensus. There had been two principal points of contention. The first one had to do with the nature of the exercise. Was it intended merely to "clarify" or "highlight" the principles of sovereign equality as laid out in Article 2(1) of the Charter, perhaps, as it was suggested, by restating the San Francisco definition of it? – Or was the intention also to "develop" it "in the light of the current needs of the world community, taking into account the progress achieved since 1945 in international law and in decolonization"? [85] The other principal point of contention had to do with the inclusion of economic aspects of equality in the declaration. This was often formulated in terms of the familiar third world claim on permanent sovereignty over natural resources, although in the course of the debate it was sometimes supplemented by the more widely expressed call for the right to "dispose freely of their national wealth and natural resources".[86] Reference was made in the debates to the UNCTAD as well as the General Assembly resolutions on permanent sovereignty of 1962 and 1966. On both issues, the developing countries failed to have their way. Some of their representatives expressed their disappointment at the final session in 1970 quite directly. In the end, the Committee had relied heavily on a draft produced at the San Francisco conference in 1945 – a draft to which reference was also made in Article 5 of the Draft Declaration on Rights and Duties of States prepared by the ILC in 1949 (but never adopted by the General Assembly).[87]

The consensus definition reached in 1964, which eventually became also the final text, was this:

---

[85] Report of the Special Committee on Principles of International law concerning Friendly Relations and Co-operation among States, UNGA Doc A/5746 (16 November 1964), 151 (paras. 301–2).

[86] Report of the Special Committee on Principles of International law concerning Friendly Relations and Co-operation among States, UNGA Dow A/6799 (26 September 1967), 191 (para 426).

[87] See especially UNCIO Vol VI, Commission I, Committee 1 (Preamble, Purposes and Principles), Report of Subcommittee A (1 June 1945), 717–718. Draft Declaration on Rights and Duties of States, UNGA Res 375 (IV) (6 December 1949) and commentary in Bardo Fassbender' 'Chapter I: Purposes and Principles, Article 2 (1), in Bruno Simma et al, *The Charter of the United nations: A Commentary, Volume I* (3rd edn. Oxford University Press 2012), 144-150-.

"l. All States enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature.

2. In particular, sovereign equality includes the following elements:

(a) States are juridically equal.

(b) Each State enjoys the rights inherent in full sovereignty;

(c) Each State has the duty to respect the personality of other States;

(d) The territorial integrity and political independence of the State are inviolable;

(e) Each State has the right freely to choose and develop its political, social, economic and cultural systems;

(f) Each State has the duty to comply fully and in good faith with its international obligations and to live in peace with other States."[88]

The only substantive addition to the 1945 text was cold-war inspired sub-paragraph (e) that underwrote the right of States to choose their "political, social, economic, and cultural systems". It came from the drafts of socialist and developing States and, according to the sponsors, was intended to implement ideas embedded in the 1955 Bandung and Belgrade Declarations.

In the course of the debate six proposals were presented that did not command consensus and never made it to the text of the declaration. By far the most important of these was any formulation of the "permanent sovereignty of natural resources". This would have enshrined a key objective of the New International Economic Order in the resolution – especially the principle that nationalization of foreign property would have been permitted in accordance with domestic law.[89] While the proposal of including something on substantive equality did receive – at least in an abstract way – some support from the Western representatives as well, in the end finding a set of words that would not simply legislate the NIEO into existence proved impossible. The painfulness of the debates was expressed in the cryptic summary of the last substantive debate on the matter that "Agreement in principle was reached on the desirability of including the concept of the right of every State freely to dispose of its national wealth and natural resources, but no agreement was reached on the text of such a provision".[90]

---

[88] Report of the Special Committee on Principles of International law concerning Friendly Relations and Co-operation among States, UNGA Doc A/6799 (26 September 1967), 185 (para 409).

[89] That this was clearly understood at the time is revealed, for example, by the counter-proposal that such a right should be made "subject to international law and to terms of agreements entered into by the State", Report of the Special Committee on Principles of International law concerning Friendly Relations and Co-operation among States, UNGA Doc A/5746 (16 November 1964), 160 (para 331).

[90] Report of the Special Committee on Principles of International law concerning Friendly Relations and Co-operation among States, UNGA Doc A/6799 (26 September 1967), 197 (para 438).

As the Special Committee ended its work, many representatives noted that it had been reduced to "barest essentials" and that it "was not entirely satisfactory and needed to be completed".[91] But it turned out impossible to proceed further. So, what the committee did instead was to list the proposals that had not attained consensus and bring them to the notice of the General Assembly. In addition to the reference to freedom to use national wealth and domestic resources, these proposals included equality in participation in international institutions and multilateral treaties, prohibition of discrimination within the United Nations system, the right of each State to remove foreign military bases and the prohibition of "experiments having harmful effects" on other countries.[92] Perhaps a little enigmatically, also the suggestion that the sovereignty of the State was limited by international law failed to find its way into the principle. While a US delegate such as Rosenstock suspected that this represented an absolutist Soviet conception of sovereignty, it was more likely that the (otherwise perhaps self-evident truism) did not get in because it was understood as a coded endorsement of the Western position that compensation for nationalized property had to be paid under the "prompt, adequate and effective" rule (the notorious "Hull formula").[93]

The declaration was accepted unanimously at the 25th anniversary session of the United Nations. The speeches at the General Assembly were, generally speaking, celebratory, although some also lamented the lack of ambition in their formulation. The representative of Nigeria, speaking on behalf of the 41 OAU member States, highlighted the importance of the UN for the newly decolonized countries and used the occasion to remind the members of the struggle against colonialism and apartheid. He was broadly supported by the representative Poland on behalf of the socialist countries – the latter not failing to highlight peaceful coexistence "of states with different political and social systems".

VII. SOVEREIGN EQUALITY SINCE 1970

Gradually, the Friendly Relations Declaration became a standard reference point for subsequent multilateral UN instruments having to do with international law. Yet, one may suspect that not many will remember, for example, the 1982 Manila

---

91 Report of the Special Committee on Principles of International law concerning Friendly Relations and Co-operation among States, UNGA Doc A/6799 (26 September 1967), 190 (para 421).

92 Report of the Special Committee on Principles of International law concerning Friendly Relations and Co-operation among States, UNGA Doc A/6230 (27 June 1966), 166-176 (paras 373-402).

93 See Robert Rosenstock, 'The Declaration of Principles of International Law Concerning Friendly Relations: A Survey, 65 *AJIL* (1971), 734n49.

Declaration on Peaceful Settlement of Disputes, the 1987 Declaration on the Enhancement of the Effectiveness of the Principle of Refraining from the Threat or Use of Force in International Relations or the 1988 Declaration on the Prevention and Removal Disputes and Situations which May Threaten International Peace and Security and on the Role of the United Nations in this Field.[94] The fact is that reiterations of UN principles by subsequent declarations has rarely translated into tangible action.

But the Friendly Relations Declaration also received life within the "Helsinki process" and served as the example for the drafting of the Helsinki Final Act in 1975. Article I of that act was precisely on "Sovereign equality, respect for the rights inherent in sovereignty", and while the first paragraph repeated the familiar wordings on "juridical equality", "territorial integrity and political independence" as well as respect for political, economic and cultural systems, they also added another paragraph with partly new content:

"Within the framework of international law, all the participating States have equal rights and duties. They will respect each other's right to define and conduct as it wishes its relations with other States in accordance with international law and in the spirit of the present Declaration. They consider that their frontiers can be changed, in accordance with international law, by peaceful means and by agreement. They also have the right to belong or not to belong to international organizations, to be or not to be a party to bilateral or multilateral treaties including the right to be or not to be a party to treaties of alliance; they also have the right to neutrality".[95]

Here now was some material that did not get into the UN Declaration, such as confirming their equal right to become members of international institutions and multilateral treaties – a provision underwriting their different security alliances (NATO and the Warsaw Pact) as well as the right to stay out of them. Attention is drawn to the intangibility of boundaries – a key aspect of the Helsinki process and a major achievement especially for the socialist bloc. Why this would be included under "sovereign equality" is hard to say, apart from as an explication of the point about territorial integrity

One might want to know more generally about the fate of the principle of sovereign equality in the international law field. Third World lawyers never fail to reference sovereign equality in their works or speeches. It is highlighted in various instruments dealing with international development, including for example the Declaration of Principles governing the Seabed and the Ocean Floor and the Subsoil thereof, beyond the limits of National Jurisdiction, adopted also in 1970, that

---

[94] See UNGA Res 37/10 (15 November 1982), UNGA Res 42/22 (18 November 1987) and 43/51 (5 December 1988).

[95] Final Act of the Conference on Security and Cooperation in Europe (CSCE), 1 August 1975

enshrined the principle that the areas outside domestic jurisdiction constituted a "common heritage of mankind" and eventually led to the III UN Conference on the Law of the Sea and the 1982 Montego Bay Convention.[97] In the 1984 UN Report on the progressive development of international law relating to the New International Economic Order, sovereign equality still stood elevated as a chief principle,[98] but after the demise of the NIEO in the late 1980s and 1990s its appearance has diminished together with the other Third World themes associated with it.

Principle 2 of the 1992 Rio Declaration on Environment and Development fails to expressly mention sovereign equality, instead including a slightly revised version of the famous "Principle 21" of the Stockholm declaration (1972), according to which all States have "the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction", itself preceded by a reference to "in accordance with the United Nations Charter and the principles of international law". The practical implementation of that provision has involved some recognition by the developed world that the duties of States may vary (e.g. the reference to 'developmental policies' in Principle 2 and, more generally, Principles 6 and 7 of the Rio Declaration) and that developed States may have an obligation to assist the less developed ones technologically and financially on meeting the objectives laid out in such later environmental and sustainable development instruments as the UNFCCC or the subsequent Paris Agreement.

One of the key problems with respect to "sovereign equality" has been that of positive discrimination. In a number of situations treaty partners have moved beyond a purely formal treatment of everyone "similarly" so as to recognize historical differences in de facto capacity in determining the rights and duties of states, such as in the provisions on preferential treatment within the GATT/WTO regime. Whether this recognition would have crystallized into anything like a customary rule may be usefully approached from the perspective of the widely applicable anti-formal principles about equity, reasonableness, proportionality and the like into multilateral treaties – the principle of "equitable utilization" in the convention

---

97 UNGA Res 2749 (XXV) 16 December 1970.

98 Report of the Secretary-General on the Progressive development of the principles and norms of international law relating to the new international economic order, UN Doc. A/39/504/Add.1 (23 October 1984).

on international watercourses possibly serving as one example.[99] Much criminal or otherwise harmful activity in the natural environment or in cyberspace takes place by private actors, and there may be some agreement that the duty of control (whether "overall" or "effective") and of due diligence that applies to them varies in relation to the capacities of the State in question. But the statement of the International Court of Justice from the early 1980s still remains that economic considerations cannot affect party obligations

> "…since they are variables which unpredictable national fortune or calamity, as the case may be, might at any time cause to tilt the scale one way or the other. A country might be poor today and become rich tomorrow as a result of an event such as the discovery of a valuable economic resource".[100]

A similar point has been made by the Seabed Chamber of the International Tribunal for the Law of Sea in connection with States sponsoring activities in the seabed and subsoil beyond national jurisdiction, the so-called Area.[101]

In the years since the passing of the Friendly Relations Declaration, Western academic lawyers have often been sympathetic towards the claims of the G77 but suspicious of reading the sovereign equality principle as legally binding on its own right. Generally speaking, in their view, international law and the UN Charter had nothing to do with the past injustices, and the best way for the developing world to catch up was to join the system and seek to influence its content from the inside. In the 1979 edition of his widely read *How Nations Behave* Louis Henkin noted that new States had not posed any great challenge to international law but had joined without great protest because "[a]cceptance into that society as an independent equal was the proof and crown of their successful struggle, and international law provided the indispensable framework for living in that society".[102] For Henkin and for the majority of Western lawyers, to be addressed as sovereign equals cancelled whatever problems about colonialism and the rhetoric of "civilization" had existed earlier. No great structural impediments for attaining substantive equality existed any longer. Now it was simply the task of the Third World to use the UN and other international institutions to attain their policy objectives.

It is very uncertain whether that is still a correct assessment of the situation – and it probably never was. The most obvious and unobjectionable aspects of sov-

---

[99] Convention on the Law of the Non-Navigational Uses of International Watercourses (New York, 21 May 1997), Article 5. Included in UNGA Res. 51/229 (1997).

[100] ICJ, *Continental Shelf* (Tunisia v. Libya), Reports 1982, 63 (para 107).

[101] *Responsibilities and Obligations of States sponsoring Persons and Entities with respect to Activities in the Area*, Advisory Opinion of 1 February 2011, ITLOS Reports 2011, paras. 158–159.

[102] Louis Henkin, *How Nations Behave. Law and Foreign Policy* (2nd ed. Columbia Univerasity Press 1979), 122.

ereign equality relate usually to its "technical" uses in formalities or questions of protocol. Here there is less of a problem – Vattel's view of small and large States standing on the same line still applies – with the most significant exceptions having to do with the position of the five permanent members of the UN Security Council and weighted voting in especially international financial institutions where formal influence in decision-making is measured by reference to a country's contribution. But there is no reasonable effort to undermine the first of the elements of the 1970 definition, the "juridical equality" between States, the equality of their standing in front of international law-applying bodies. Of course, even this matter is influenced by developments in the "real" or political world, and one may enquire into the way in which the uneven jurisdiction of the International Criminal Court might be invoked as a counter-example. The effort of the United States to exempt its military personnel and its later action against the court and its officials are part of the imperialist turn of its recent government that is happy to lead the country outside a world where protocols and formality are taken seriously.[103]

VIII. Sovereign equality and justice

Equality is not a measurable thing like mass or temperature that can be described using precise units derived from universal constants of nature.[104] To be "equal" refers to a relative system or standard – it refers to the question "equal in what respect"? It involves a comparison and needs an external point of view, a standard and a comparator or at least a shared understanding from which two entities may or may not appear as sufficiently similar to be treated in the same way. Poor communities can be equal in respect to each other but unequal in respect to rich ones. Neither equality not sovereign equality exclude different treatment as such. On the contrary, equality does not only mean treating those that are similar in some respect in a similar way, but also treating differently those whose situation is de facto different – again, different in a *relevant* respect. While this principle is frequently accepted in domestic societies – people with different income levels pay different amounts of tax and people with disabilities are provided assistance not available to those who have no such disabilities – it has been much more diffi-

[103] Anne Peters, 'Compensatory Constitutionalism: The Function and Potential of Fundamental International Norms and Structures' 19 *Leiden Journal of International Law* (2006) 579–610 at 604–605; Robert C Johansen 'The Impact of US Policy toward the International Criminal Court on the Prevention of Genocide, War Crimes, and Crimes against Humanity' 28 *Human Rights Quarterly* (2006) 301–331.

[104] *Cf.* 'Metrologists ditch last physical standard units', 563 *Nature* (2018) 451–452.

cult to accept anything of the kind on the international plane. Mechanisms of "positive discrimination" of the kind involved in preferential treatment in international trade law or in contributions to international environmental regimes are weak and often contested. We may easily understand why this would be the case. In the domestic context, there is some rudimentary solidarity that allows citizens to recognize that their shared "citizenship" entitles them to view each other from the perspective of some imagined idea of what binds them together – a shared religion, history, common ideas of nationhood and the like. These ideas constitute the "third" – the basic criteria or values – that enable treating otherwise different individuals similarly (as "citizens") but also taking account of *relevant* differences as bases for different treatment (e.g. by taxing richer citizens with a higher percentage or by creating quota to ensure the representation of formerly underrepresented groups of citizens).

In the international world, there is no such "third" – no shared criteria, understandings or values – that could justify deviation from the utterly formal standard of "sovereign statehood".[105] Of course, states could in principle try to agree on some relative classifications through mutual agreement or by relying on quantitative criteria and indexes. But all this would come uncomfortably close to seeking a "standard of civilization" anew and would be very hard to administer. In practice, it has been seen that it is hard to object against a state's self-qualification as a member of a special class of states in case benefits might accrue to such membership. In any case, such instances would be bound to remain rare and of marginal importance.

Thus we are left with an indeterminate vision of equality, a seemingly common standard which still harks back to Vattel's intuitive utopia: whether large or small, rich or poor, old or new, all States must be similarly treated. *That* is an easy standard to apply. It operates automatically and presupposes no evaluation on anybody's part. "*If you are a state, then this is how you will be treated*". That is of great value in a society where there is a priori no solidarity and no trust that law-appliers would use their discretion in an acceptable way. So they are granted none. But like any bright-line rule, this, too, is both over and under-inclusive. It is over-inclusive to the extent that it applies the *same* treatment also to those who *in actual fact would deserve being treated differently.* And it fails to apply that treatment to those "non-States" who in a relevant respect would deserve to be

[105] Martti Koskenniemi, *From Apology to Utopia* (Cambridge University Press 2005 [1989]).

treated just like States because there is no relevant difference between them and "formal States" (Palestine, Western Sahara, Tibet…).

It is true of course, that people constantly complain about the injustice of formal equality – we have seen the repeated claim by the global south that historical injustices against them ought to be taken into account in assessing the contributions that those States would have to pay for participating in international cooperation on environmental protection, for example. The call for preferential treatment appeals to one type of solidarity across the world. But that is by no means the only basis on which deviation from formal equality is proposed. Others critique that:

"[t]he smallest and financially weakest states, representing a minority of the total population in the organization, possess a majority of the votes. Paying a fractional share of the assessments of the organization, they are able to outvote those paying the highest rates".[106]

An occasional Western complaint in the past against majorities in the UN General Assembly, this claim is bound to be resuscitated with the neo-right nationalism en vogue in the United States and parts of Europe. It, too, builds on a "third" that enables treating different entities differently – only this time not building on solidarity but on white supremacism.

By and large, the Friendly Relations Declaration may well be understood as a vocal renunciation of any further formal structures *de jure* of distinction between sovereigns. Understood as such, it is a vow of humanity to never return to the rhetoric of Lorimer and his contemporaries. And with many observers, in particular those in affluent and influential countries of the past decades, this may well have been enough. But the question of ever-increasing inequality in the factual world, combined with the seemingly perpetual distinction between the "developed" world and the "developing" world, cannot but lead one to ask whether indeed a degree of factual equality is a prerequisite for true formal intercourse between equals. The boundary here is hard to determine, for in a world of formal equals but factual un-equals, most structural inequalities can be rephrased as matters of chance and circumstance, and vice versa. The wealthier States may always argue that their status as nuclear powers or their precedence in deep-sea mining or the conquest of the Antarctic is due to their hard-earned success, not structural inequality; but just as well, a brutal dictatorship may declare that its people are happy and more determined to live in surveillance, discipline and punishment,

[106] Robert, A. Klein, *Sovereign Equality among States : The History of an idea* (University of Toronto Press, 1974), 148.

having no desire for standardized guarantees of basic human dignity. On the other hand, the same brutal dictator might at some other occasion explain that the hellish conditions of his or her citizens are forced by the unfair balances with which the game of global economy and imperialism are rigged. But speaking of structural inequality, a powerful State may for its own part clinch to veto any form of world-improvement, arguing that it is itself a victim of structural bias which threatens to undermine the fairness of the mutually agreed global institutions, therefore demanding that the advanced powers resign from multilateralism altogether …

Again: the great problem with "sovereign equality" is that it cannot be applied without some criterion of justice that points to the relevant quality in accordance which entities such as "States" may appear either "similar" or "different". The attainment of statehood is expected to endow every entity filling the requisite criteria with all the rights and privileges, as well as all the obligations, of statehood. It was this type of justice that was highlighted during decolonization. But equality also requires that entities that are different are not forced in the same straight-jacket, that it would be wrong to impose obligations on those who, for whatever reason, are unable to bear them. Rules about "reverse discrimination", special rights and preferential treatment are a commonplace in domestic legal systems, even if their application is always more or less contested. Such contestations reflect differing ideas about the type of justice that the domestic polity should stand for. But there usually is no disagreement that it should stand for *some* justice. By contrast, on the international plane, it is much harder to say not only what type of justice the international system should seek to advance, but whether it should advance any ideas of justice at all. The Cold War view of international law as a pure coordination between systems sharing no concept of justice at all has been thoroughly discredited. For a moment, in the 1990s, it may even have appeared that a broadly liberal, free trade and human-rights oriented justice was being institutionalized in international institutions. In the present world of nationalist conflict and Realpolitik, it would be much more daring to suggest that international law stands for some idea about a just world – beyond repeating the hypocritical mantra about "friendly relations among nations". It would be tragedy if, looking back fifty years from 2020, we found that we have made no progress from where we were then.